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In The

# Supreme Court of the United States

October Term, 1973

No. 73-606

SIDNEY ROSS LANGLEY AND
CHARLES SIDNEY LANGLEY,
*Petitioners,*

v.

UNITED STATES OF AMERICA,
*Respondent.*

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

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SIDNEY ROSS LANGLEY AND
CHARLES SIDNEY LANGLEY,
*Petitioners,*

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UNITED STATES OF AMERICA,
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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

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*To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:*

Sidney Ross Langley and Charles Sidney Langley, petitioners herein, pray that a writ of certiorari issue to review the order of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on August 7, 1973.

## OPINIONS

The opinion of the United States Court of Appeals for the Seventh Circuit was rendered in the form of an order and is unreported. Said opinion is printed in the Appendix

hereto, *infra,* page 1. The docket entry of the judgment in the United States District Court for the Southern District of Indiana, New Albany Division, as to petitioner Charles Sidney Langley is printed in the Appendix hereto, *infra,* page 8.

## JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on August 7, 1973 (*infra,* Appendix page 7). The jurisdiction of the Court is invoked under 28 U.S.C., section 1254(1). An order extending the time for petitioners to file their petition for a writ of certiorari in this Court was extended to and including October 5, 1973, by order of the Honorable William H. Reinquist, Associate Justice of the Supreme Court of the United States, entered on August 27, 1973, and is printed in the Appendix hereto, *infra,* page 10.

## QUESTION PRESENTED

**The Trial Judge Committed Error Prejudicial To The Petitioners By Denying Petitioners' Motion For Judgment Of Acquittal As To Count I Of The Bill Of Indictment Made At The Close Of The Government's Evidence And At The Close Of All Of The Evidence.**

## STATEMENT

On May 26, 1971, the Grand Jury returned a true Bill of Indictment in this criminal action containing four (4) counts. Count I in the Bill of Indictment charged that the Apellants, together with co-defendants, Marvin Call and Bobby Gene Langley, and with William Henry Parrish and the late Willard Raymond Medlin, from on or about the 13th day of February, 1970, and continuously thereafter up to and including the date of January 17, 1971, in the

Southern District of Indiana and elsewhere, willfully and knowingly did combine, conspire, confederate, and agree together and with each other and with diverse other persons, whose names are to the Grand Jury unknown, to commit an offense against the United States, that is: to willfully and knowingly distill spirits from mash while not being a distiller authorized by law to produce distilled spirits, in violaton of Title 26, United States Code, Sec. 5601(a)(8), the said conspiracy being in violation of Title 18, United States Code, Sec. 371. Eleven (11) overt acts were alleged in Count I of the Bill of Indictment as will appear in the record.

Count II in the Bill of Indictment charged that on or about the 17th day of January, 1971, in the Southern District of Indiana, Appellant Sidney Ross Langley and co-defendant Marvin Call unlawfully, willfully and knowingly did have in their possession and custody, and under their control a still and distilling apparatus, which was not registered with the Secretary of the Treasury or his delegate as required by Sec. 5179, Title 26, United States Code, in violation of Title 26, United States Code, Sec. 5601(a)(1).

Count III in the Bill of Indictment charged that on or about the 15th day of January, 1971, in the Southern District of Indiana, Appellant Sidney Ross Langley and co-defendant Marvin Call willfully and knowingly did carry on the business of a distillery without having given bond as required by Sec. 5173(a), Title 26, United States Code, in violation of Title 26, United States Code, Sec. 5601 (a)(4).

Count IV in the Bill of Indictment charged that on or about the 15th day of January, 1971, in the Southern District of Indiana, Appellant Sidney Ross Langley and

co-defendant Marvin Call willfully and knowingy did make and ferment a quantity of mash, the exact amount being to the grand jurors unknown, fit for distillation and for the production of distilled spirits in a building and on premises other than the designated premises of a distilled spirits plant lawfully qualifying to produce distilled spirits, in violation of Title 26, United States Code, Sec. 5601(a)(7).

In the trial of this criminal action, it was encumbent upon the Government to offer evidence from which the jury could find beyond a reasonable doubt that two (2) elements of the offense charged in Count I of the Bill of Indictment had been committed by the Petitioners, to-wit; (1) that the Petitioners, together with the other persons named in Count I of the Bill of Indictment, conspired to produce distilled spirits in violation of Title 26, U.S. Code, Sec. 5601 (a)(8); and (2) that the Petitioners committed an overt act in furtherance of said conspiracy. *U.S.* v. *Falcone,* 311 U.S. 205; *Duke* v. *U.S.,* 233 F.2d 897 (C.A. 5th Cir.) 1956.

All of the Government's evidence bearing upon the crime charged in Count I of the Bill of Indictment as against Petitioners is circumstantial. In such case, we respectfully submit that the test to be applied by the Trial Judge when ruling upon the Petitioners' motions for Judgment of Acquittal is that such motions should be allowed when the evidence is circumstantial and completely consistent with Petitioners' innocence, and when such evidence is of such nature that a jury might reasonably conclude that it fails to exclude every reasonable hypothesis but that of guilt. *U.S.* v. *V. Wroblewski,* 105 F.2d 444 (7th Circuit) 1939; *Harper* v. *U.S.,* 405 F.2d 185 (C.A. Miss.) 1969; *O'Connell* v. *U.S.,* 402 F.2d 760 (C.A. Tex.) 1968; *Davis* v. *U.S.* 385 F.2d 919 (C.A. Ga.) 1967.

## REASONS FOR GRANTING THIS WRIT

We respectfully submit that the decision rendered by the United States Court of Appeals for the Seventh Circuit in the case at bar is in conflict with the decisions of the United States Court of Appeals for the Fifth Circuit in the cases of *Harper* v. *U.S., supra; O'Connell* v. *U.S., supra;* and *Davis* v. *U.S., supra.* Indeed, the Government in its brief filed in the case at bar stated:

> "The Seventh Circuit does not follow the Fifth Circuit position . . . ." citing *U.S.* v. *Williams,* 311 F.2d 721 (7th Cir. 1963)

The Government further stated in its brief that the Seventh Circuit follows the decision of *Curley* v. *U.S.* 160 F.2d 229, 81 U.S. App. D.C. 389 (1947) which imposes a stricter standard in evaluating the efficiency of circumstantial evidence than is imposed with respect to direct evidence and establishes the view that there is some special applicability to circumstantial evidence cases.

The United States Court of Appeals for the Seventh Circuit in its opinion in the case at bar stated:

> "The Appellants argue that the Government's case against them was based on circumstantial evidence and was completely consistent with their innocence and that the evidence was of such nature that a jury might reasonably conclude that it fails to exclude every reasonable hypothesis but that of guilt. However, this standard, which is sometimes referred to in cases which are based on circumstantial evidence, is only another form of the rule that the jury must be convinced beyond a reasonable doubt. *U.S.* v. *Wrobleski,* 105 F.2d 444, 449 (7th Cir. 1939)."

We submit that the Fifth Circuit rule is a rule of law which the Trial Judge should apply when ruling upon a

motion for Judgment of Acquittal, rather than one which the Trial Judge should include in his charge to the jury.

We further submit, that it is obvious that the position taken by the United States Court of Appeals for the Seventh Circuit in the case at bar is in conflict with the decisions upon the rule in question of the United States Court of Appeals for the Fifth Circuit, and that the Fifth Circuit rule is the correct application of the law and should be applied in the case at bar.

## CONCLUSION

For the foregoing reasons, we respectfully submit that the Petitioners have been prejudiced by their motions for Judgment of Acquittal having been denied and that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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*Counsel for Petitioners*

# APPENDIX



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UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago Illinois 60604

August 7, 1973
(Argued June 14, 1973)

Before

Hon. Luther M. Swygert, Chief Circuit Judge
Hon. John W. Reynolds, Chief District Judge*
Hon. Robert A. Grant, Senior District Judge**

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No. 72-1720

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United States Of America

Appellee,

vs.

Sidney Ross Langley and Charles Sidney Langley,

Appellants.

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Appeal from the United States District Court for the Southern District of Indiana, New Albany Division.

No. NA 71 CR 9

James E. Noland, Judge

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* Chief District Judge John W. Reynolds of the United States District Court for the Eastern District of Wisconsin sitting by designation.

** Senior District Judge Robert A. Grant of the United States District Court for the Northern District of Indiana sitting by designation.

**ORDER**

The appellants and two other persons were indicted in the Southern District of Indiana on May 26, 1971. Count I of the indictment charged the appellants and the two others with conspiracy under 18 U.S.C. § 371, to violate 28 U.S.C. § 5601(a)(8) which prohibits the production of distilled spirits from mash by a person not authorized to produce distilled spirits. Count II charged appellant Sidney Ross Langley and co-defendant with unlawful possession, custody and control of an unregistered still, in violation of 26 U.S.C. § 5601(a)(1). Count III charged appellant Sidney Ross Langley and co-defendant with carrying on the business of a distiller without having given the required bond, in violation of 26 U.S.C. § 5601(a)(4). Count IV charged appellant Sidney Ross Langley and co-defendant with making and fermenting mash fit for distillation and for production of distilled spirits on other than authorized premises in violation of 26 U.S.C. § 5601(a)(7). The appellants were tried by a jury in the United States District Court for the Southern District of Indiana. The jury found appellant Charles Sidney Langley guilty as charged in Count I of the indictment. The jury found appellant Sidney Ross Langley guilty as charged in Counts I, II and III of the indictment and not guilty as charged in Count IV of the indictment. Upon their conviction of Count I, both appellants were sentenced to imprisonment for three (3) years and fined Five Thousand Dollars ($5,000.00). Appellant Sidney Ross Langley was given two additional three (3) year sentences upon his convictions under Counts II and III, to run concurrently with the three-year sentence imposed on Count I. Thereafter, the appellants instituted this appeal.

Both appellants contend that the District Court erred in denying each appellant's motion for judgment of acquittal on the basis of insufficiency of evidence.

The appellants argue that the government's case against them was based on circumstantial evidence and was completely consistent with their innocence and that the evidence was of such nature that a jury might reasonably conclude that it fails to exclude every reasonable hypothesis but that of guilt. However, this standard, which is sometimes referred to in cases which are based on circumstantial evidence, is only another form of the rule that the jury must be convinced beyond a reasonable doubt. *United States* v. *Wrobleski,* 105 F.2d 444, 449 (7th Cir. 1939). Further, as an appellate court reviewing a case, even when the case is based on circumstantial evidence, ". . . we must adhere to the principle that '[i]t is not for . . . [a reviewing court] to weigh evidence or to determine the credibility of witnesses. The verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the government, to support it.' *Glasser* v. *United States,* 315 U.S. 60, 80, 62 S.Ct. 457, 469, 86 L.Ed. 680 (1942)." *United States* v. *Lewin,* 467 F.2d 1132, 1141 (7th Cir. 1972). Where the appellate court finds that there was substantial evidence to amply support the District Court's denial of a motion for judgment of acquittal, that determination will be upheld. *United States* v. *Williams,* 311 F.2d 721, 723 (7th Cir. 1963), *cert. den.* 374 U.S. 812.

First, appellant Charles Sidney Langley contends that the district court erred in denying his motion for judgment of acquittal as to the charge of conspiracy against him. The essence of the crime of conspiracy is an agreement between two or more persons to commit an offense against the United States supplemented by the overt act of one or

more of the conspirators to effectuate the agreement. The existence of a formal agreement need not be shown; rather the agreement can be inferred from the overt acts of the parties. *United States* v. *Harris,* 433 F.2d 333, 335 (4th Cir. 1970).

We find that there was substantial evidence to support the district court's denial of appellant Charles Sidney Langley's motion for judgment of acquittal. First, there was testimony at trial that the appellant accompanied his father, appellant Sidney Ross Langley, and his brother, Bobby Gene Langley, to inspect a farm near Marengo, Indiana, in early 1970. This was the farm which his brother purchased a short time later and where an illegal still was found in January 1971. Secondly, handwriting comparisons were introduced at trial which established that the appellant had signed the bill of sale for a 1969 Dodge truck which was stopped on a highway in November 1970 and found to be transporting untaxed distilled spirits. Finally, handwriting comparisons were introduced which established that the appellant had signed the registration certificate for a 1968 Chevrolet truck which was purchased shortly after the Dodge truck was confiscated. The Chevrolet truck was seen leaving the farm on 14 January 1971 and it was stopped shortly thereafter and found to be transporting untaxed distilled spirits. In view of all this evidence we find that there was substantial evidence upon which the district court could base its denial of appellant Charles Sidney Langley's motion for judgment of acquittal.

Appellant Sidney Ross Langley contends that the district court erred in denying his motion for judgment of acquittal. First, this appellant attacks the sufficiency of the evidence as to his conviction under Count I of the indictment. However, we find that there was substantial evidence upon which the district court could base its denial of the appellant's

motion for judgment of acquittal. First, there was testimony that appellant accompanied his sons, appellant Charles Sidney Langley and Bobby Gene Langley, to inspect the farm in question. There was also testimony that appellant resided on the farm from March 1970 until October 1970. Further, there was testimony from two witnesses that during separate visits which they made to the farm in September 1970, they talked with appellant and detected an odor similar to that of a distillery and noticed material on the premises which can be used in the construction of a still. There was also testimony that appellant purchased large quantities of coal oil. Further, there was testimony that said appellant was seen on January 15, 1971, entering the barn where the still was later found and that he remained there most of the night while what appeared to be a blower from a still was running. Since the 1968 Chevrolet truck was apprehended on 14 January 1971, it is apparent that the still had already been in operation when the appellant was seen entering the barn. Finally, when he was apprehended on January 17, 1971, the appellant had just walked out of the barn and the co-defendant was found in the barn atop the still. Both had apparently been dismantling the still. Some 240 gallons of whisky were found in the barn.

Appellant Sidney Ross Langley has argued that proof that he resided on property where a still was found was not sufficient to support his conviction for conspiracy, citing *Jones* v. *United States*, 365 F.2d 87, 89 (10th Cir. 1966). He has also argued that proof that he purchased an item which could be used in the production of distilled spirits is not sufficient to support his conviction for conspiracy, citing *Jehl* v. *United States*, 127 F.2d 585, 586 (9th Cir. 1942). However, the government's evidence was not just limited to one of those incidents but, rather, there was evidence of both of those incidents as well as many even

more incriminating matters which are listed above. Accordingly, we find that there was substantial evidence to support the conviction of appellant Sidney Ross Langley under Count I of the indictment.

Next, appellant Sidney Ross Langley attacks the sufficience of the evidence as to his conviction for unlawful possession, custody and control of an unregistered still under Count II of the indictment. The appellant contends that the charge of unlawful possession, custody and control of an unregistered still is a narrower charge than that of carrying on the business of a distiller, and the mere presence of the accused is not sufficient to establish unlawful possession. *United States* v. *Romano,* 382 U.S. 136, 141 (1965). However, evidence of the presence of an accused at a still may be introduced as relevant evidence of possession of a still. *United States* v. *Mayfield,* 439 F.2d 136, 137 (6th Cir. 1971). Further, where there is additional proof, the jury's conclusions of guilt may be warranted. *Hooper* v. *United States,* 388 F.2d 392 (5th Cir. 1968). Also, facilitating in setting up or operating of an unregistered still has been found to constitute sufficient evidence to support a conviction on this charge. *United States* v. *Mayfield, supra,* 439 F.2d at 138. Viewing the evidence in the light most favorable to the government, we find that aside from the testimony concerning the appellant's presence at the still on January 17, 1971, there was also evidence from which the jury could conclude that the appellant had facilitated in the operation of the still in question. First, as mentioned above, there was testimony that on January 15, 1971, the appellant had spent most of the night in the barn while the sound of a blower was heard. Secondly, evidence was introduced which indicated that there were mash stains on the jacket which the appellant was wearing when he was apprehended. We find that these facts in themselves consti-

tute sufficient evidence upon which the jury could find the appellant guilty as charged in Count II of the indictment.

Finally, appellant Sidney Ross Langley attacks the sufficiency of the evidence as to his conviction for carrying on the business of a distiller under Count III of the indictment. Unlike the charge of unlawful possession, custody and control of an unregistered still, the charge of carrying on the business of a distiller can be established by the accused's presence at a still without an acceptance explanation, as supported by the statutory presumption provided in 26 U.S.C. § 5601(b)(2).[1] *Pinion* v. *United States*, 397 F.2d 27, 28-29 (5th Cir. 1968). Testimony was presented regarding the appellant's presence at the still on January 15, 1971, and on January 17, 1971. Testimony was then introduced on the appellant's behalf that when he went to the still on January 17, 1971, he had just discovered its existence and had gone to the barn to destroy it. However, this would not explain his presence at the still on January 15, 1971. Furthermore, it was for the jury to decide whether or not it could accept this explanation of the appellant's presence at the still. Based on the testimony concerning the appellant's presence in the barn on January 15, 1971, we cannot say that the jury should have accepted the explanation which the defense gave for appellant's presence at the still on January 17, 1971. Aside from the testimony concerning the appellant's presence at the still

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[1] 26 U.S.C.A. § 5601(b)(2):

"Failure or refusal of distiller or rectifier to give bond.—Whenever on trial for violation of subsection (a)(4) [carrying on the business of a distiller without having given bond] the defendant is shown to have been at the site of place where, and at the time when, the business of a distiller or rectifier was so engaged in or carried on, such presence of the defendant shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such presence to the satisfaction of the jury (or of the court when tried without jury)."

on January 15, 1971, and the testimony concerning his presence on January 17, 1971, either of which would constitute sufficient evidence to support a conviction on Count III, there was also other evidence of guilt, including the evidence concerning the mash stains on the appellant's jacket.

For the foregoing reasons we find that there was substantial evidence to support the district court's denial of appellant Sidney Ross Langley's motion for judgment of acquittal on each of the three counts under which he was convicted. Accordingly, we affirm the convictions of both appellants.

* * *

**JUDGMENT AS TO SIDNEY ROSS LANGLEY**

On this 16th day of May, 1972 came the attorney for the government and the defendant appeared in person and by Harold D. Cooley and Vernon F. Daughtridge, his hired counsel.

It Is Adjudged that the defendant upon his plea of not guilty, and a verdict of guilty has been convicted of the offenses of conspiracy to violate Title 26 U.S.C., Section 5601(a)(8), in violation of Title 18 U.S.C., Section 371, (Count I), possession of and custody of unregistered still, in violation of Title 26 U.S.C., Section 5601(a)(1), (Count II), carried on business of a distiller without having given bond as required by law, in violation of Title 26 U.S.C., Section 5601(a)(4), (Count III), as charged in the indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and Convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 3 years and fined in the sum of $5,000.00 as to Count I, 3 years as to Count II and 3 years as to Count III, the sentences as to Counts II & III, to be served concurrently with the sentence imposed in Count I.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ James E. Noland
*United States District Judge.*

* * *

**JUDGMENT AS TO CHARLES SIDNEY LANGLEY**

On this 16th day of May, 1972 came the attorney for the government and the defendant appeared in person and by Harold D. Cooley and Vernon F. Daughtridge, his hired counsel.

It Is Adjudged that the defendant upon his plea of not guilty, and a verdict of guilty has been convicted of the offense of conspiracy to violate Title 26 U.S.C., Section 5601(a)(8), in violation of Title 18 U.S.C., Section 371, as charged in the indictment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to

the custody of the Attorney General or his authorized representative for imprisonment for a period of 3 years and fined in the sum of $5,000.00.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ James E. Noland
*United States District Judge.*

* * *

SUPREME COURT OF THE UNITED STATES

No. A-232

Sidney Ross Langley and Charles Sidney Langley,
Petitioners,

v.

United States

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**ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI**

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Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above entitled cause be, and the same is hereby, extended to and including October 5, 1973.

/s/ William H. Rehnquist
*Associate Justice of the Supreme Court of the United States*

Dated this 27th day of August, 1973.